

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Breeanne Buckley Peni, Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

DAILY HARVEST, INC., SECOND BITE  
FOODS, INC. d/b/a “STONE GATE FOODS”,  
SMIRK’S LTD., AND MOLINOS ASOCIADOS  
SAC,

Defendants.

Civil Action No.  
22-cv-05443  
Honorable Denise Cote

**PLAINTIFF’S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT, APPOINTMENT OF CLASS REPRESENTATIVE AND CLASS  
COUNSEL, AND APPROVAL OF MANNER OF DISTRIBUTION OF NET  
SETTLEMENT FUNDS**

**PLEASE TAKE NOTICE THAT**, upon the Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox, sworn to on February 14 2025, and the accompanying exhibits and memorandum of law, and upon all prior proceedings, pleadings, and filings in the above-captioned action, Plaintiff Breeanne Buckley Peni will move this Court at the United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, before the Honorable Denise Cote, United States District Judge, for an Order under Federal Rule of Civil Procedure 23 to:

1. Grant final approval of the proposed Class Action Settlement in the amount of Seven Million, Six Hundred and Seventy-One Thousand Dollars (\$7,671,000.00) with the Settling Defendants Smirk’s Ltd. and Molinos Asociados SAC, on behalf

of the Settlement Class Members according to the terms of the parties' Settlement Agreement;

2. Have the Third Amended Class Action Complaint serve as the operative complaint for the settlement of all litigation and claims against the Settling Defendants;
3. Certify, for settlement purposes only, the Rule 23(b)(3) Class which is defined as "All persons in the United States (including its territories) who purchased, received, or consumed French Lentil + Leek Crumbles ("the Product" or "the Crumbles") and directly suffered personal injuries caused by the consumption of the Crumbles, and all persons in the United States (including its territories) who suffered consequential monetary damages arising from or related to another person's personal injuries arising from consumption of the Crumbles."
4. Approve the sufficiency of the Notice provided to the Class;
5. Approve the Allocation Matrix and manner of distribution of the Net Settlement Funds;
6. Appoint Edgar Gentle of Gentle Turner & Benson, LLC as the Settlement Administrator for purposes of administering the Settlement Program;
7. Appoint Plaintiff Breeanne Buckley Peni as class representative;
8. Appoint Plaintiff's Counsel as attorneys for the class ("Class Counsel");
9. Dismiss this action with prejudice on the merits against the Settling Defendants;
10. Enjoin any released claims by the Settlement Class; and
11. Enter such further relief requested in the proposed Final Judgment attached to the accompanying Joint Declaration of William D. Marler, James R. Peluso, and Jeffrey A. Bowersox in support of the motion.

**PLEASE TAKE FURTHER NOTICE** that a Final Approval Hearing is scheduled for March 3, 2025.

Dated: February 14 2025

Respectfully submitted,

*/s/ William D. Marler*

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